

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OH

FILED

2013 OCT 31 AM 11:
CLERK OF COURT
CUYAHOGA COUNTY

RAYMOND S.R. KU,
17666 Stockton
Chagrin Falls, OH 44023

Plaintiff,

vs.

LAWRENCE E. MITCHELL,
3072 Fairmount Blvd.
Cleveland Heights, OH 44118

and

CASE WESTERN RESERVE
UNIVERSITY,
c/o Elizabeth J. Keefer
Adelbert Hall, Room 311
10900 Euclid Avenue
Cleveland, OH 44106,

Defendants.

FIRST AMENDED COMPLAINT WITH JURY DEMAND

NATURE OF THE ACTION

1. This is a civil-rights action brought under R.C. 4112.99 for violations of the Ohio Civil Rights Act, specifically R.C. 4112.02(I), and other violations of state law. In this complaint, Case Western Reserve University School of Law Professor Raymond Ku alleges that Case Western Reserve University, and Dean of the Law School Lawrence E. Mitchell, retaliated against Professor Ku for opposing Dean Mitchell's unlawful discriminatory practice of sexually harassing females in the law-school community.

PARTIES

2. Plaintiff Raymond Ku is a tenured professor at Case Western Reserve University School of Law. He works in Cuyahoga County.
3. Defendant Case Western Reserve University (Case) is a university located within the boundaries of Cuyahoga County. Case is vicariously liable for the acts of its supervisory employees, including Dean Lawrence Mitchell.
4. Defendant Lawrence E. Mitchell is the Dean of Case's School of Law. He works and resides in Cuyahoga County.

JURISDICTION AND VENUE

5. This Court has jurisdiction because the suit concerns state-law violations by Defendants and the amount in controversy exceeds \$25,000.
6. The Court has personal jurisdiction over Defendants.
7. Venue is proper here because all parties reside, work, and/or are located in this county, and the events at issue took place in this county.

FACTUAL BACKGROUND

Professor Ku's rise.

8. Professor Raymond Ku has been a tenured professor at Case School of Law since 2003. He is an intellectual-property scholar who teaches copyright, constitutional, and property law. Professor Ku has significant expertise in teaching and publishing regarding cyberspace, Internet privacy, and related areas of technology.
9. Professor Ku received his undergraduate degree from Brown University and his law degree from New York University School of Law. Before being recruited to join the Case law faculty, Professor Ku taught at the law schools at Cornell, Seton Hall, Thomas Jefferson, and St. Thomas. He clerked for Judge Timothy K. Lewis on the United States Court of Appeals for the

Third Circuit and was a litigator at Gibson, Dunn & Crutcher LLP and Levine Pierson Sullivan & Koch LLP before entering academia.

10. Professor Ku is the co-author of a popular casebook on Cyberspace Law (currently in its third edition) as well as many articles on intellectual property. A copy of his curriculum vitae is attached as Exhibit 1.

11. When Professor Ku was recruited, Case's law school was trying to build its Center for Law, Technology & the Arts. Professor Ku came in as a full, tenured professor and the associate director of the LTA Center.

12. In 2006, Professor Ku was promoted to co-director of the Center for Law, Technology & the Arts during the deanship of Gary Simson.

13. In 2008, Case created the Cyberspace Law & Policy Office. Professor Ku was appointed that office's co-director.

14. In 2009, Professor Ku was honored as Professor of the Year by the graduating class. He also received the Distinguished Teacher Award from the Case Association of Law Alumni.

15. In 2010, former Dean Robert Rawson promoted Professor Ku to Associate Dean for Academic Affairs, the second highest position in the law school.

16. In his capacity as associate dean, Professor Ku was responsible for the administration and management of the law school's curriculum of over 200 courses, approximately 50 full-time faculty members, roughly 100 adjunct faculty members, and the enforcement of the law school's academic policy for almost 600 students. He represented the administration at faculty and university committees, and at events and functions when the dean was unavailable.

17. Professor Ku is one of the most-cited professors on the Case law faculty. The Roger Williams University Law School Faculty Scholarship Study ranks the influence of law faculty at

institutions outside the U.S. News & World Report Top 50.¹ In 2010, the draft Roger Williams Faculty Scholarship Study inadvertently did not include Professor Ku on the list because he publishes under his full name (Raymond Shih Ray Ku) and the search parameters failed to account for authors with two middle names. After the parameters were corrected, he was not only one of the top Case faculty for that year, but Case Law School jumped ten places in the study's rankings with Professor Ku's scholarship properly accounted for.

18. Professor Ku has served on various committees at Case, including the Faculty Senate Committee on Minority Affairs, which he chaired in 2011; the Promotion and Tenure Committee, which he chaired from 2008–10; the Clinical Faculty Tenure Committee, which he chaired from 2007–08; the Rankings Committee; the Appointments Committee, which he chaired in 2004–05, and the Law School Diversity Committee, which he chaired in 2011.

19. The Law School Diversity Committee considers and makes recommendations to improve the diversity of students, staff, and faculty at Case. This is an important committee to the institution because the Case Law School has consistently fallen short in terms of diversity, which has been a major source of contention with both American Bar Association and Association of American Law Schools accreditation. At one point, the AALS threatened Case Law School's membership due to the school's lack of diversity. Professor Ku was literally a poster child for diversity at Case, and was featured prominently on the diversity section of the university's website in a rotating photo (and remains so to this day).

¹ The Roger Williams University Law School Faculty Scholarship Study is “an inventory of the scholarly output in [the] top [20] law journals to assess the relative strength of the ‘non-elite’ schools in one form of scholarly research. It is the basis for the ranking of ‘Per Capita Productivity Articles in Top Journals, 1993–2012: Law School Outside the U.S. News Top 50.’” See Faculty Scholarship Study <http://law.rwu.edu/faculty/faculty-productivity-study> (last visited October 24, 2013).

20. Professor Ku served as faculty advisor to the *Internet Law Journal* from 2003-09. Since 2009, he has served as the faculty advisor to the *Case Western Reserve Journal of Law, Technology & the Internet*.

Lawrence E. Mitchell becomes dean.

21. In 2011, following an extended search process, Case hired Lawrence E. Mitchell as the law school's new dean. Dean Mitchell previously taught law at George Washington University Law School.

22. While Dean Mitchell was interviewing at the law school, Professor Ku had a good meeting with him. Professor Ku was looking forward to continuing in his role as Associate Dean for Academic Affairs under Dean Mitchell. And Dean Mitchell asked him to do so.

23. No women have joined the faculty since Lawrence Mitchell became the law school's dean, and at least two female professors and various female administrative staff have left the law school.

24. Before Dean Mitchell arrived at Case Law School to begin his deanship, his reputation preceded him. Members of the search committee and the Case Law School faculty, including Professor Ku, were aware of concerns about Dean Mitchell's sexual behavior at GW, including at least one sexual relationship with a law student and other inappropriate and questionable conduct.

25. Professor Ku began to feel concerned about Dean Mitchell's approach to diversity early on in their professional relationship. From the time Dean Mitchell became dean, he made comments to Professor Ku regarding his Chinese heritage. Upon learning that Professor Ku was about to convert to Judaism, Dean Mitchell remarked that now Professor Ku was in two of Dean Mitchell's favorite groups, Asian and Jewish. Dean Mitchell asked Professor Ku about being circumcised. Dean Mitchell's inappropriate comments made Professor Ku uncomfortable.

26. Professor Ku also became generally aware at various points that (1) while Dean Mitchell was a professor at George Washington, he divorced his wife to marry a student; (2) he then divorced the student; (3) he then married a woman who joined the law faculty; and (4) they separated and divorced after adopting a child. Professor Ku also heard at some point that Dean Mitchell was restricted from visiting his child without supervision.

27. Still, despite the things he had learned and heard, Professor Ku kept an open mind about the dean.

**Professor Ku witnesses Dean Mitchell caress a
married female colleague at an off-campus gathering.**

28. On or about August 28, 2011, Dean Mitchell hosted an event for faculty and staff of the law school at his new home in Cleveland Heights. Spouses and significant others were included in this event. Professor Ku, as the Associate Dean for Academic Affairs, made it a point to arrive early. Professor Ku and his wife were chatting with Dean Mitchell, discussing Professor Ku's conversion, when Dean Mitchell—in front of Professor Ku's wife—again raised the issue of Professor Ku being circumcised. Dean Mitchell's inappropriate comments made Professor Ku and his wife uncomfortable. This was not the last inappropriate comment that Dean Mitchell would make that evening.

29. Dean Mitchell consumed numerous alcoholic beverages during the party on August 28, 2011.

30. As the party was winding down, Professor Ku and his wife were waiting to say their goodbyes to their host. As they waited, Professor Ku observed Dean Mitchell run his hand up the back of ***Administrative Staff Member 1***,² an assistant dean at the law school.

² To protect the victims of Dean Mitchell's harassment from retaliation and embarrassment for as long as possible, Professor Ku will refer to them by position in this Complaint. He will make their names available in discovery subject, if necessary, to an appropriate protective order.

Administrative Staff Member 1's back was somewhat exposed because she was wearing a summer dress. Both Professor Ku and his wife witnessed this inappropriate physical contact—which is best described as a caress of his colleague's exposed skin—and found it to be sexually inappropriate as well as unnerving and creepy.

Professor Ku learns that Dean Mitchell made inappropriate, sexually charged comments to at least two other faculty members at the party on August 28.

31. A few days after the party, Professor Ku had a conversation with **Professor 1** (one of the other associate deans) and **Professor 2**, both female professors at the law school. They were discussing an ongoing search for a new faculty member and Dean Mitchell's expressed preference for a particular white-male candidate. **Professor 1** (who has since departed Case to serve on another law faculty) was, at the time, on the Appointments Committee and reported discussing with Dean Mitchell the need to include other candidates, including women and people of color. During this conversation about diversity, Professor Ku raised what he saw Dean Mitchell do to **Administrative Staff Member 1** at the party. In response, one of the women told Professor Ku about Dean Mitchell saying something inappropriate to **Professor 3** at the party. One of the women also shared with Professor Ku that two women on the legal-writing faculty, **Professor 4** and **Professor 5**, had experienced discrimination/harassment issues with Dean Mitchell.

32. **Professor 3** herself later confirmed to Professor Ku that at the August 28 party, Dean Mitchell had said something to her and her husband about Dean Mitchell stealing her away from her husband. **Professor 3** reported to Professor Ku that this sexually charged comment upset her husband. Given the inappropriate comments Dean Mitchell made to her, **Professor 3** expressed concern about how he would treat female candidates for the faculty.

33. As Associate Dean for Academic Affairs, and as a human being, Professor Ku was concerned about what he had witnessed and now heard about Dean Mitchell's inappropriate behavior toward women, particularly in light of Dean Mitchell's reputation at George Washington University Law School. Professor Ku was concerned that such behavior by Dean Mitchell at university events, including sexually charged comments, flirtations of a sexual nature, and physical touching, created an offensive, humiliating, hostile, or intimidating work or educational environment. Professor Ku consulted with ***Administrative Staff Member 2***, another assistant dean, who reported that Dean Mitchell had made similar sexually charged comments to her and her husband at the party that the dean had made to ***Professor 3***.

Professor Ku realizes Case's sexual-harassment policy requires him to report Dean Mitchell's sexual harassment.

34. In discussing concerns about Dean Mitchell's behavior toward women, and mindful of their obligations to the university and their students, Professor Ku and ***Administrative Staff Member 2*** reviewed the university's sexual-harassment policy, including its mandatory reporting requirement: "*All members of the university community must adhere to the sexual harassment policy and report violations of the policy.*"³ Though she agreed that Dean Mitchell's conduct violated the policy and that the reporting requirement was not discretionary, ***Administrative Staff Member 2*** expressed fear about losing her job if she reported Dean Mitchell's conduct.

35. Professor Ku likewise understood that the policy obligated him to raise these concerns about Dean Mitchell's treatment of women in the law-school community, but as a tenured

³ Emphasis added. A copy of the Case Western Reserve University Sexual Harassment Policy that was effective in 2011 is attached as Exhibit 2. Case's Faculty Handbook likewise requires all members of the university community to adhere to the sexual-harassment policy and to report violations of the policy, including any incidents that faculty witness or hear about that "could be construed as sexual harassment." The Faculty Handbook prohibits retaliation against persons who raise concerns about sexual harassment and assures faculty that "appropriate action will be taken" if retaliation occurs.

professor he was not in the more precarious position that *Administrative Staff Member 2* faced in terms of job security. They discussed the risk of retaliation, but Professor Ku, faced with various concerns including: (1) the inappropriate physical contact to which Dean Mitchell had subjected *Administrative Staff Member 1*; (2) Dean Mitchell's inappropriate and sexually charged comments to *Professor 3* and *Administrative Staff Member 2*; (3) Dean Mitchell's treatment of two female members of the legal-writing faculty (*Professor 4* and *Professor 5*), and (4) Dean Mitchell's dubious background at GW Law School, Professor Ku felt that he had no choice but to report the conduct under the sexual-harassment policy. He was also concerned about the potential effect on the work and educational environment as a whole and felt that, as Associate Dean for Academic Affairs, it was in the female student body's interest that he report Dean Mitchell's sexually harassing conduct. The school year had just started. Professor Ku was concerned for the university and the law school because it would be a huge scandal if Dean Mitchell was discovered to be harassing not just faculty and staff but also the law students who pay over \$45,000 in annual tuition for the privilege of attending Case Western Reserve University School of Law. Despite Professor Ku's concerns about retaliation, he knew that the law, Case's sexual-harassment policy, and the Faculty Handbook forbid retaliation for reporting sexual harassment and discrimination.

Professor Ku meets with Provost “Bud” Baeslack to report Dean Mitchell’s sexual harassment—and Baeslack passes the buck back to Ku to raise the concerns directly with Mitchell.

36. Having reached the conclusion that Case's sexual-harassment policy mandated that he report Dean Mitchell's behavior, Professor Ku, with the help of his assistant, attempted to meet with Dean Mitchell as well as with Provost and Executive Vice President W.A. “Bud” Baeslack III, the second-highest-ranking university official and Dean Mitchell's immediate supervisor. It was just before the Labor Day holiday, and Dean Mitchell apparently had departed campus for

the weekend and would not return until the following Tuesday. Professor Ku had intended, as a courtesy, to notify Dean Mitchell that he (Ku) was going to make the report required under the policy, but Dean Mitchell's absence from campus precluded that.

37. Professor Ku was able to arrange a meeting with Provost Baeslack on or about Thursday, September 1, 2011. (Sometime before the meeting, *Administrative Staff Member 2* said that she wished that she had been in a position to inform the Provost about Dean Mitchell's behavior.)

38. Provost Baeslack is the administrator who is most directly in charge of Dean Mitchell and the law school. Professor Ku met with Provost Baeslack and reported what he (Ku) had witnessed and heard about Dean Mitchell's inappropriate and sexually harassing behavior toward women at Case. Professor Ku described the concerning conduct but did not share the victims' names out of concern for their privacy and potential retaliation against them for reporting Dean Mitchell's harassing conduct.

39. Provost Baeslack stated that he had already had to address an issue with Dean Mitchell about him using profanity at university events. But during the meeting, it became clear to Professor Ku that Provost Baeslack was not going to address with Dean Mitchell the issue of him sexually harassing women at the law school. Provost Baeslack communicated to Professor Ku that *he* (Professor Ku) should address the sexual harassment with Dean Mitchell and report back to Provost Baeslack on how it went. Provost Baeslack put Professor Ku (Dean Mitchell's subordinate) in the position of addressing Dean Mitchell's sexually harassing behavior with him.

Professor Ku follows Provost Baeslack's instruction and meets with Dean Mitchell to discuss the sexual-harassment concerns—and Mitchell berates Ku as having "betrayed" Mitchell and threatens to fire Ku.

40. Following Provost Baeslack's instructions, Professor Ku met with Dean Mitchell on or about Tuesday, September 6, 2011 (after the Labor Day holiday). The meeting had been previously scheduled to attend to regular law-school business and Professor Ku intended to raise the sexual-harassment issues at the end of the meeting. But from the moment the meeting began, Professor Ku could tell that something was wrong. At the outset, Dean Mitchell was defensive in his tone of voice and body language. After they concluded their agenda items, Dean Mitchell asked, "What else do you want to talk about?" or words to that effect. Professor Ku believes that someone tipped off Dean Mitchell that Professor Ku would be addressing the issue of Dean Mitchell's sexual harassment.

41. Professor Ku raised the issue of Dean Mitchell's sexual harassment as diplomatically as humanly possible. Professor Ku explained his concerns to Dean Mitchell about him subjecting faculty and administrative staff to behavior that violated the sexual-harassment policy.

42. *Dean Mitchell never denied engaging in the inappropriate conduct.* Instead, Dean Mitchell expressed shock and disbelief that the affected individuals would not feel comfortable raising these issues with him personally, or that anyone would feel he would be angry or retaliate. Dean Mitchell then spent the rest of the meeting berating Professor Ku for reporting his concerns to Provost Baeslack.

43. Dean Mitchell accused Professor Ku of being "disloyal" and breaching Dean Mitchell's trust by reporting his behavior to Provost Baeslack. Dean Mitchell stated that he viewed Professor Ku's reporting as a "betrayal" and a "breach of trust" and questioned whether Ku could continue to work as associate dean.

44. Dean Mitchell stated that if Professor Ku ever did anything similar again (i.e., report Dean Mitchell's sexual harassment to a university administrator), Dean Mitchell would "fire" Professor Ku.

45. Dean Mitchell stated his belief that it was Professor Ku's sole duty to report directly to Dean Mitchell. Professor Ku disagreed, explaining that this was not an internal disagreement over law-school policy, and that Professor Ku's report to Provost Baeslack was motivated by Professor Ku's legal and ethical duty to the university and the law school to report allegations of sexual harassment. Dean Mitchell continued to claim that he had been "betrayed" by Professor Ku and—effectively admitting the misconduct—stated, "It's not like I raped someone." Dean Mitchell accused Professor Ku of undermining his (Mitchell's) authority and stated that this is exactly why Case Law School was "not able to get a real dean" for the last several years.⁴ Dean Mitchell demanded that Professor Ku apologize for reporting his concerns to Provost Baeslack.

Professor Ku stands up to Dean Mitchell to protect the university and law school; refuses to hush up Mitchell's misconduct as part of a "boys' club."

46. In the face of Dean Mitchell's hostility, Professor Ku responded that he took this matter very seriously, and that this was a situation with potential violations of not only university policy but also local, state, and federal law. Professor Ku declined to apologize for following university policy and assured Dean Mitchell that if further sexual-harassment-policy violations came to his (Ku's) attention, he would not hesitate to report them per university policy. Professor Ku emphasized that university policy did not leave to Professor Ku or Dean Mitchell's discretion whether potential sexual-harassment-policy violations would be reported, but rather was

⁴ This was an apparent reference to the distinguished stewardship of the law school by preeminent litigator Robert Rawson as interim dean while the law school was conducting a formal national search.

mandatory. Professor Ku made it clear that this matter was not going to be hushed up by some boys' club and that the university's central administration had a right to know about these issues for the sake of the university and the law school. Professor Ku explained that he was trying to protect the institution's reputation and avoid a potential controversy.

Dean Mitchell directs Professor Ku to apologize to the women the dean sexually harassed.

47. Eventually, Dean Mitchell dismissed Professor Ku from the meeting stating that the "argument is going nowhere." Dean Mitchell ordered Professor Ku to convey the dean's apologies to the women who had expressed concerns (again, never denying that he had engaged in sexually harassing and inappropriate conduct with multiple women).
48. Following the meeting, Professor Ku followed Dean Mitchell's orders and conveyed his apologies to the women who had shared their concerns with him (Ku). Each expressed their doubts that Dean Mitchell would change his behavior. *Professor 3* expressed that her husband remained very concerned about Dean Mitchell's sexually charged comments at the party on August 28 and did not want her to be left alone with the dean.

Professor Ku reports back to Provost Baeslack about meeting with Dean Mitchell.

49. After following Dean Mitchell's instructions to convey his apologies to the women who expressed concerns about his sexually harassing and inappropriate behavior, Professor Ku had a telephone conversation with Provost Baeslack about the meeting with Dean Mitchell. Provost Baeslack denied reaching out to Dean Mitchell before Professor Ku met with the dean. Professor Ku reported that Dean Mitchell was very angry and had threatened to fire him for reporting the sexual-harassment concerns. Provost Baeslack stated that Dean Mitchell had contacted him (Baeslack) and was indeed quite angry. Provost Baeslack actually *defended* Dean Mitchell, claiming that the dean's anger was "understandable" and "expected" because Professor Ku went to

Provost Baeslack before clearing it with the dean. Provost Baeslack stated that he would not like it if a subordinate went over his head. While Provost Baeslack agreed that it was inappropriate to threaten to fire Professor Ku for reporting sexual harassment, Provost Baeslack never acknowledged that Professor Ku had complied with university-mandated policy by reporting the incidents, and was not supposed to go to Dean Mitchell or otherwise obtain “permission” before reporting sexual harassment. Provost Baeslack instead concluded the conversation by explaining that he hoped that the next step would be to repair the leadership team’s working relationship.

Dean Mitchell initiates a campaign of retaliation against Professor Ku, unsuccessfully tries to get Professor Ku fired altogether, and pressures Professor Ku to step down as associate dean.

50. Following Professor Ku’s report of Dean Mitchell’s sexually harassing behavior and declining to apologize for doing so, Dean Mitchell began a campaign of retaliation against Professor Ku.
51. Dean Mitchell worked behind the scenes to attempt to have Professor Ku—a tenured professor—removed from the Case Law School faculty but was unable to achieve this objective.
52. Dean Mitchell tried to discredit Professor Ku amongst the faculty and had meetings targeting Professor Ku.
53. Dean Mitchell enlisted assistance to monitor Professor Ku’s blog posts and to drum up faculty support for the dean while attempting to discredit Professor Ku.
54. At least one administrative staff member received a monetary bonus due at least in part to his efforts assisting Dean Mitchell in attempting to discredit Professor Ku in the wake of his complaint to Provost Baeslack about Dean Mitchell’s misconduct.
55. Professor Ku first became aware of the retaliation at a meeting amongst Professor Ku, Dean Mitchell, and Provost Baeslack on or about September 8, 2011 (two days after the meeting between Dean Mitchell and Professor Ku where Ku first raised the harassment concerns). Dean

Mitchell began the meeting by asking if Professor Ku was willing to apologize for reporting the sexual harassment and admit he was wrong. Professor Ku again declined to apologize for being concerned about the potential effect of Dean Mitchell's behavior on the work and educational environment as a whole, for following university policy and the law, and for seeking to protect the institution, faculty, staff, students. Dean Mitchell proceeded to chastise Professor Ku in front of Provost Baeslack. Dean Mitchell berated Professor Ku for being "disloyal," "betraying" Dean Mitchell, and violating his "trust." Dean Mitchell asked Professor Ku to consider whether he should continue in his role as associate dean. Provost Baeslack did nothing to correct Dean Mitchell's behavior or otherwise intervene.

56. Professor Ku again explained the seriousness with which he took both what he had witnessed as well as the concerns that faculty and staff had shared with him about Dean Mitchell's behavior toward women and their ongoing fear that Dean Mitchell's behavior might negatively impact female faculty candidates, students, staff, faculty, and even donors. Professor Ku explained that—in his reading of the sexual-harassment policy—complaints about harassment need not rise to the level of rape (as Dean Mitchell had previously suggested) for the school to respond promptly or to trigger the mandatory reporting requirement. Professor Ku expressed how his actions were taken to maintain confidentiality and resolve the matter in the most amicable way possible to minimize and avoid negative publicity.

57. Dean Mitchell continued to emphasize that the associate dean's role required "absolute loyalty" to the dean. Professor Ku countered that, although the associate dean should maintain public unity with the dean on matters of law-school policy, it was not Professor Ku's job to keep Dean Mitchell's secrets.

58. Dean Mitchell advised Professor Ku to take a few days to consider whether he should continue as associate dean. Professor Ku responded that Dean Mitchell should consider the consequences for retaliating against an employee who opposed discrimination.

59. Notwithstanding Professor Ku's explanation and adherence to the sexual-harassment policy, Provost Baeslack sided with Dean Mitchell, never once acknowledging that Professor Ku was required by the school's own policy to report the misconduct. Provost Baeslack instead emphasized that the dean and associate dean had to have a good working relationship. Provost Baeslack again noted that Dean Mitchell's anger was understandable, and that he (Baeslack) would be angry and upset under similar circumstances. Provost Baeslack said Professor Ku "should have moved heaven and earth" to speak to Dean Mitchell before speaking to the provost. Professor Ku emphasized that he took no pleasure in having raised these concerns with Provost Baeslack and that he (Ku) was in an extremely difficult position. Dean Mitchell retorted: "Now you know how I have felt because you spoke to the provost."

60. Despite Provost Baeslack's lack of support in the face of Dean Mitchell's retaliation for Professor Ku's reporting the sexual-harassment concerns as required by university policy, Professor Ku was emphatic that he wished to remain in his role as associate dean.

61. Dean Mitchell then insisted that Professor Ku be in the building five days per week (which had never before been a requirement of the position). Dean Mitchell implemented this requirement expecting Professor Ku to fail to meet it, thus creating a pretextual justification for terminating him from his position as associate dean. Professor Ku reminded Dean Mitchell that he (Ku) was teaching an overload of courses in addition to his administrative responsibilities and that he worked from home one day per week to pursue his scholarly agenda. As for many law professors, Professor Ku finds time outside the office conducive to writing because it allows him to focus without interruption. This was especially true in his role as associate dean when—given

the breadth and depth of his responsibilities—he would regularly have to deal with last-minute appointments, telephone calls, or crises. But despite Professor Ku—one of the most-cited scholars at the law school—explaining how this new requirement would hurt his writing, Dean Mitchell persisted in imposing this new requirement at the expense of Professor Ku’s scholarship.

62. Dean Mitchell also ordered Professor Ku to prepare and submit a report about his plans for the office of associate dean. Provost Baeslack admitted that this was unnecessary “homework” but did not discourage or dissuade Dean Mitchell from demanding it. Provost Baeslack also commented that Professor Ku must be feeling like he was on the hot seat. The meeting adjourned with the understanding that Professor Ku would complete this unnecessary busywork and discuss it with Dean Mitchell over lunch.

63. After the meeting amongst Professor Ku, Provost Baeslack, and Dean Mitchell, Dean Mitchell never communicated with Professor Ku face to face. And Dean Mitchell proceeded to do nearly everything that one can do to a tenured professor to retaliate against him for reporting Dean Mitchell’s sexual harassment. From that point forward, Dean Mitchell excluded Professor Ku from involvement in matters in which, as associate dean, Professor Ku would customarily be involved with the exception of very minor, low-level issues.

64. The following day, on or about September 9, 2011, Dean Mitchell reassigned responsibility for three new tasks to Professor Ku. These tasks were a teaching interest group, Case Downtown, and the North East Ohio Faculty Colloquium. These responsibilities had, until then, fallen under the auspices of another associate dean, who at the time was *Professor 1*. *Professor 1* discouraged Dean Mitchell from reassigning these tasks to Professor Ku because she was concerned that he would be overloaded. But Dean Mitchell ignored her.

University Vice President Mobley acknowledges that Professor Ku is the victim of “a classic case of retaliation”—and says she will report the retaliation to University President Barbara Snyder’s attention right away.

65. After the berating he received from Dean Mitchell in front of Provost Baeslack on September 8 and the reassignment of various tasks from *Professor I* to Professor Ku, on or about Friday, September 9, 2011, Professor Ku met with Marilyn Mobley, the University’s Vice President of the Office of Inclusion, Diversity & Equal Opportunity. The meeting was in person at her office. Professor Ku reported Dean Mitchell’s retaliation and explained what had happened during the meeting with Dean Mitchell and Provost Baeslack.

66. Dr. Mobley responded that this was “a classic case of retaliation.” Dr. Mobley told Professor Ku that she was going to bring Dean Mitchell’s retaliation to University President Barbara Snyder’s attention right away.

67. Dr. Mobley then brought Faculty Diversity Officer John Clochesy into the meeting. Professor Ku shared all the same details again with Dr. Clochesy. Dr. Clochesy expressed the same opinion as Mobley, that this was a clear case of retaliation. Both Dr. Mobley and Dr. Clochesy agreed that Professor Ku should file a formal complaint for retaliation based on Dean Mitchell’s conduct in response to Professor Ku reporting Dean Mitchell’s sexual harassment. It was late Friday afternoon, so they arranged to meet again on Monday to complete the formal complaint. As the meeting concluded, Dr. Mobley stated that she was going right over to see President Snyder to report what Professor Ku had reported about the retaliation he was facing. Dr. Mobley later confirmed with Professor Ku that she had done this.

Provost Baeslack “just doesn’t get it.”

68. On or about the next business day, Monday, September 12, 2011, Professor Ku met with Dr. Clochesy as arranged the previous Friday. Dr. Clochesy recorded the details of Professor Ku’s formal retaliation complaint. During this meeting, Dr. Clochesy stated to Professor Ku that

Provost Baeslack just “didn’t get it” when it came to sexual harassment. Dr. Clochesy shared with Professor Ku the story of a sexual-harassment issue related to a student in a study-abroad program and how the issue’s significance and the urgency of action had to be explained to Provost Baeslack. Dr. Clochesy advised Professor Ku that the women (whose privacy Professor Ku was still protecting) should be made aware that they could report the harassment confidentially through a hotline.

Women fear retaliation.

69. Later that day, Professor Ku, complying with Dr. Clochesy’s instruction, spoke with ***Administrative Staff Member 2***. He told her that he had filed a formal complaint for retaliation, and that the university administration was going to begin an investigation. She stated that she might have to quit her job because she did not want to be forced into a position in which she would have to lie about Dean Mitchell’s behavior to keep her job.

70. That same day or shortly thereafter, Professor Ku also spoke to ***Professor 1, Professor 2***, and ***Professor 3*** and shared what Dr. Clochesy had asked Professor Ku to tell them about the anonymous hotline’s availability.

Dean Mitchell never discusses the busywork assignment with Professor Ku.

71. On or about September 14, 2011, Dean Mitchell informed Professor Ku’s assistant that their scheduled lunch (where they were supposed to discuss the busywork report Mitchell had assigned Ku) had been changed to a meeting. Later that day, Dean Mitchell—again through Professor Ku’s assistant—canceled the meeting. Dean Mitchell made no effort to reschedule and never discussed with Professor Ku the unnecessary homework that Professor Ku needlessly completed.

Dean Mitchell is elated to learn that Case administration will be backing him despite Professor Ku's complaint.

72. Within a week or two after Professor Ku made his complaint about Dean Mitchell's sexual harassment, Dean Mitchell learned that University President Barbara Snyder would be backing him regardless of Ku's complaint, and that nothing would happen in response to the complaint. Dean Mitchell was jubilant to learn that the university's central administration would be backing him.

After initially acknowledging that Dean Mitchell's conduct was "a classic case of retaliation," university administrators attempt to sweep under the rug the harassment and retaliation.

73. On or about September 15, 2011, Professor Ku again met with the Dr. Mobley and Dr. Clochesy. Their attitude and demeanor toward Professor Ku had changed markedly. Before, just days earlier, they had been supportive and sympathetic to Professor Ku's predicament in reporting Dean Mitchell's sexual harassment under a mandatory policy and being retaliated against in return. These officials had agreed that Professor Ku was experiencing "classic retaliation."

74. But now Dr. Mobley and Dr. Clochesy accused Professor Ku—falsely—of attempting to "collect statements" about Dean Mitchell's sexual harassment. Professor Ku explained that he had just followed Dr. Clochesy's instruction to tell the women they could call the anonymous hotline. Professor Ku had not attempted to collect any statements.

75. On or about September 19, 2011, Professor Ku again met with Dr. Mobley and Dr. Clochesy. Dr. Mobley and Dr. Clochesy again accused Professor Ku of trying to "collect statements" about Dean Mitchell's sexual harassment. Professor Ku again assured them that he was not trying to investigate, but had simply—per Dr. Clochesy's instruction—conveyed to the

harassment victims with whom he had spoken their option to anonymously report Dean Mitchell's sexual harassment.

76. On or about either September 15 or 19, Professor Ku told Dr. Mobley and Dr. Clochesy that he (Ku) was aware that **Professor 6** had started the process of raising another issue with Dr. Mobley, specifically Dean Mitchell's propositioning a student for a "threesome." **Professor 6** had reported to Professor Ku that the student had come to **Professor 6** confidentially to raise this and **Professor 6** had passed it along to university administration.

77. Based on their recent meetings, Professor Ku was getting the sense that Dr. Mobley and Dr. Clochesy were perhaps focusing only on the harassment issues, and ignoring the retaliation against him. Concerned that his report of retaliation was now not being taken seriously, on or about Friday, September 28, 2011, Professor Ku sent a letter to Dr. Mobley about his concerns about retaliation by Dean Mitchell.

78. On or about September 29, 2011, Dr. Mobley sent Professor Ku an email to follow up on their meeting on September 19. In the email, Dr. Mobley acknowledged that Professor Ku had raised "concerns [he] indicated were expressed about interactions between Dean Lawrence Mitchell and certain members of the Law School faculty and staff at a recent gathering" and that those concerns "may fall under the University's Sexual Harassment Policy." She claimed that her office's inquiry into the matter was complete.

Professor Ku raises concerns about being excluded from consideration for a newly endowed chair in retaliation for reporting Dean Mitchell's sexual harassment, but again is rebuffed by university administrators.

79. On or about October 7, 2011, Professor Ku again met with Dr. Mobley and Dr. Clochesy. At this meeting, Professor Ku shared his concerns about the treatment of women and minorities at the law school regarding a newly endowed chair for a faculty member teaching intellectual property (the Spangenberg Family Foundation Chair in Law and the Arts).

Appointment to an endowed chair recognizes and rewards a professor's professional contributions, recognizes the value of his or her scholarship and research, and provides a continuous stream of funding.

80. Professor Ku noted that he was qualified for the open position, but Dean Mitchell refused to consider internal candidates. *Professor I* had nominated Professor Ku for consideration for this chair, but was informed by the Appointments Committee chairperson that Dean Mitchell was not allowing the committee to consider internal candidates. Upon information and belief, this was the first time that internal candidates were excluded from consideration for a law-school endowed chair.

81. On or about October 24, 2011, Dr. Clochesy dismissed Professor Ku's concerns about the Spangenberg chair, claiming that the Dean had discretion to use the chairs as he saw fit.

After initially acknowledging that Professor Ku was experiencing “a classic case of retaliation,” Dr. Mobley claims that her supposed “investigation” concludes that there was no retaliation against Professor Ku for reporting Dean Mitchell’s sexual harassment of law-school females.

And Professor Ku reluctantly resigns his position as associate dean.

Dean Mitchell: “I am a dictator!”

82. On or about Monday, October 31, 2011, Dr. Mobley claimed to Professor Ku that she had conducted an investigation and that she had concluded that Professor Ku's concerns about being retaliated against were “unsubstantiated.” She provided no explanation for her conclusions—or for her about face from previously telling Professor Ku that his situation was a “classic case of retaliation.”

83. On or about November 1, 2011, Professor Ku reluctantly tendered his resignation as Associate Dean for Academic Affairs and chair of the Law School Diversity Committee. He was constructively discharged from those positions based on Dean Mitchell's retaliation and the

university administrators' respective failures to intervene or prevent the retaliation. As Professor Ku stated in his letter of resignation addressed to Dean Mitchell: "because you have effectively ended all of my substantive authority in these positions and removed me from all substantive decision making after I reported concerns about your potentially discriminatory behavior regarding women at the law school, I can no longer reasonably remain in these positions or serve in your administration."

84. Professor Ku's resignation as Associate Dean for Academic Affairs was celebrated by Dean Mitchell and other upper-level administrative personnel including the law school's Development Director JT Garabrand.

85. At the time Professor Ku resigned his associate deanship, Dean Mitchell was preparing imminently to fire Ku from that post. Provost Baeslack had approved the termination and Dean Mitchell was already considering potential replacements when Professor Ku tendered his resignation. Dean Mitchell was relieved that he did not have to formally terminate Ku from the position.

86. In relation to the performance of his duties as dean of the Case Law School, Dean Mitchell stated vehemently, "I am a dictator!"

87. Before the end of Professor Ku's time as Associate Dean for Academic Affairs, it had been the custom and practice at the law school for former associate deans to retain an increased salary following their service in that role. But Professor Ku's salary was reduced after he ceased serving as associate dean.

88. Case, and specifically Provost Baeslack, Dr. Mobley, and Dr. Clochesy, failed to take any corrective action after Professor Ku complained of Dean Mitchell's retaliation.

Professor Ku was not the only one who complained to Case's central administration about Dean Mitchell's sexual misconduct and retaliation.

89. On or about December 12, 2011, *Administrative Staff Member 3* complained in a letter to Provost Baeslack that Dean Mitchell had engaged in sexual relations with *Law Student 1* and was engaging in retaliation against *Administrative Staff Member 3* based on his knowledge of Dean Mitchell's improprieties. *Administrative Staff Member 3* expressed that this improper conduct was part of "a pattern of unprofessional behavior."

90. *Administrative Staff Member 3* went on to note that, "my close knowledge of Dean Mitchell's past and potential behavior causes me to have great concern for the integrity and reputation of the Case Western Reserve University Law School and for the safety of the students and staff." He also stated, "I have come to fear for my personal safety."

91. During *Administrative Staff Member 3*'s time working for Dean Mitchell, the dean would regularly mention his own sex life and inquire into *Administrative Staff Member 3*'s sex life. *Administrative Staff Member 3* did not welcome these comments and at times was too shocked to reply.

92. Case's sexual-harassment policy provides: "When one party has any professional responsibility for another's academic or job performance or professional future, the university considers sexual relationships between the two individuals to be a basic violation of professional ethics and responsibility...Because of the asymmetry of these relationships, 'consent' may be difficult to assess, may be deemed not possible, and may be construed as coercive."

93. The dean of the Case Law School has professional responsibility for the professional future of each law student enrolled there.

94. Per Case's sexual-harassment policy, for Dean Mitchell to engage in sexual relations with a law student was a basic violation of professional ethics and responsibility.

95. After **Administrative Staff Member 3** raised Dean Mitchell's sexual relationship with **Law Student 1** with Provost Baeslack, Case refused **Administrative Staff Member 3**'s request for paid administrative leave and told him to work from home. Despite **Administrative Staff Member 3**'s report of sexual misconduct, university administrators claimed to him that they did not have enough information to conduct an investigation.

96. Because university administrators claimed they did not have sufficient information to begin an investigation, **Administrative Staff Member 3** agreed to come in for a meeting on or about December 14, 2011. Despite **Administrative Staff Member 3**'s repeated reports that he feared for his personal safety, Carolyn Gregory, Case's Vice President for Human Resources, ignored his concerns—and shared directly with Dean Mitchell an electronic calendar notification of her meeting with **Administrative Staff Member 3**.

97. On or about December 14, 2011, **Administrative Staff Member 3** met with Dr. Mobley and Vice President Gregory to discuss his concerns with them.

98. During this December 14 meeting, which lasted two-to-three hours, **Administrative Staff Member 3** told Dr. Mobley and Vice President Gregory about Dean Mitchell's retaliation against Professor Ku. **Administrative Staff Member 3** made it clear that there was retaliation and—that at Dean Mitchell's express direction—he had been complicit in it. **Administrative Staff Member 3** provided a great deal of detail about his efforts, under Dean Mitchell's direction, to discredit Professor Ku among his colleagues on the faculty and about Dean Mitchell's own efforts to push Professor Ku out of the associate deanship and have Professor Ku removed from the Case Law School faculty.

99. Shortly after this meeting with Vice President Gregory and Dr. Mobley, **Administrative Staff Member 3** discovered that his access to his @Case.edu email had been cut, along with his campus parking pass.

100. On or about January 5, 2012, Vice President Gregory told *Administrative Staff Member 3* that their supposed “investigation” determined that there was no retaliation against him and that he should continue to work from home. But he received no assignments.

101. After complaining about Dean Mitchell to Provost Baeslack, Dr. Mobley, and Vice President Gregory, *Administrative Staff Member 3* was briefly reassigned outside the law school, and brought in-house to the office of H.R. Vice President Carolyn Gregory herself—and then, days later, was told that he was “laid off for budgetary reasons.”

102. *Administrative Staff Member 3* was offered a monetary severance package in an effort to buy his silence by having him sign a non-disclosure agreement. Vice President Gregory and John Wheeler, Senior Vice President for Administration, encouraged *Administrative Staff Member 3* to sign the non-disclosure agreement, but he refused.

103. On information and belief, Case’s policy is to offer severance packages only after an employee has completed one year of service. But *Administrative Staff Member 3* had been employed for less than six months when he was offered a severance package in exchange for signing a non-disclosure agreement.

104. On information and belief, *Administrative Staff Member 3* was not the first Case employee to be “reassigned” to Gregory’s department after reporting misconduct and then to be quietly let go.

Other complaints about Dean Mitchell’s behavior.

105. On information and belief, during the 2011–12 academic year, one or more university administrators became aware of additional concerns about Dean Mitchell’s behavior from one or more sources in or associated with Case.

106. One or more individuals complained that Dean Mitchell was behaving in a sexually inappropriate manner with one or more individuals at Case Law School events including student parties at Dean Mitchell's house and faculty dinners.

107. In light of the concerns Professor Ku and *Administrative Staff Member 2* discussed about Dean Mitchell's behavior, *Administrative Staff Member 2* made it a point to be present at all of the future student dinners at Dean Mitchell's house. At these dinners, Dean Mitchell would encourage those in attendance to stay past the scheduled end time of the event and consume more alcohol. Other staff members who attended these dinners shared concerns about Dean Mitchell's inappropriate behavior, and one or more of them reported their concerns to an immediate supervisor. Upon information and belief, these student dinners were later moved to an on-campus location based on concerns about Dean Mitchell's inappropriate behavior.

108. *Professor 3* complained to *Administrative Staff Member 3* about Dean Mitchell being "all over" the dean's date at a faculty dinner, which *Administrative Staff Member 3* passed along to the dean anonymously (as *Professor 3* requested).

109. Dean Mitchell also behaved inappropriately at one or more student parties he hosted at his house, paying inordinate amounts of attention to *Administrative Staff Member 4*. She would sit on the arm of his chair all evening, or on the floor with him by the stereo, and they would engage in physical touching that made others uncomfortable. Administrative staff members who attended these parties discussed how to distract Dean Mitchell from this interaction, which they found sexually inappropriate.

110. Despite the staff concerns, Dean Mitchell directed *Administrative Staff Member 3* to seat Dean Mitchell next to *Administrative Staff Member 4* on the seating chart for a faculty dinner and to sit *Administrative Staff Member 4*'s long-time boyfriend next to

Administrative Staff Member 3 at the other end of the room so **Administrative Staff Member 3** could keep the boyfriend occupied. **Administrative Staff Member 4** has been promoted several times during Dean Mitchell's administration.

111. After an event at Dean Mitchell's house, Dean Mitchell requested that **Administrative Staff Member 3** and his date engage in a "threesome" with Dean Mitchell. Dean Mitchell showed **Administrative Staff Member 3** the guest bedroom and pointed out the new Chinese silk sheets he had purchased. **Administrative Staff Member 3** did not welcome this sexual proposition from his boss (and had no interest in Chinese silk sheets) and declined to engage in the "threesome" with Dean Mitchell.

112. The dean of the Case Law School has professional responsibility for the job performance and professional future of administrative staff at the law school.

113. Per Case's sexual-harassment policy, for Dean Mitchell to proposition an administrative staff member for sex was a basic violation of professional ethics and responsibility.

Case's chief litigation counsel gives a presentation to the law-school faculty and staff about the sexual-harassment policy and non-retaliation.

114. During about the spring semester in 2012, Peter M. Poulos, Chief Litigation Counsel and Chief Risk Management Officer in Case's Office of General Counsel, made a presentation to law-school faculty and senior staff about the Case anti-sexual-harassment and anti-retaliation policies. Poulos expounded on the policy's mandatory-reporting requirement, emphasizing that faculty and staff do not have the discretion to judge whether conduct definitively violates the policy, and thus are required to report all instances of questionable conduct. Poulos also emphasized the university's non-retaliation policy. Poulos exhorted those in attendance to follow the mandatory-reporting requirement in the case of any suspect behavior. Both Dean Mitchell and Professor Ku attended this presentation.

Dean Mitchell's retaliation resumes after Professor Ku returns from sabbatical.

115. Professor Ku was on sabbatical for 2012–13 academic year, plans for which he had previously negotiated and arranged with the former dean, Robert Rawson. A sabbatical at a university is a rotating benefit that arises every several years, in which a tenured professor takes an extended compensated absence typically to fulfill some goal such as pursuing scholarly research and writing.

116. On or about June 13, 2013, Professor Ku received his contract for the then-upcoming academic year, beginning the fall of 2013. His stipend for co-directorship of the Center for Law, Technology & the Arts was missing. And his pay increase was much lower than the customary rate increases he had received over his previous decade as a Case law professor.

117. On or about June 14, 2013, Professor Ku sent an email to Dean Mitchell stating that there had been a mistake, and that Professor Ku's new contract did not include reference to his co-directorship of the Center for Law, Technology & the Arts. Dean Mitchell responded that there was no mistake: Dean Mitchell had decided not to reappoint Professor Ku as co-director of the Center for Law, Technology & the Arts. Dean Mitchell provided no explanation for taking away a leadership role that Professor Ku had played in one form or another since joining the law school ten years earlier, indeed, which he had been hired—and came to Case—to assume.

118. On or about July 13, 2013, the new Associate Dean for Academic Affairs, on Dean Mitchell's behalf, assigned Professor Ku to teach an additional seminar over and above his customary course load. The new course required new preparation and significant teaching time for which Professor Ku was not compensated. The previous practice for staffing these seminars was to ask for volunteers. But after Professor Ku reported Dean Mitchell's sexual harassment, Dean Mitchell unilaterally assigned Professor Ku to teach one of these seminars.

COUNT 1
RETALIATION UNDER OHIO R.C. 4112.02(I) AND 4112.99

119. Plaintiff Ku incorporates all previous allegations.

120. Under Ohio law including R.C. 4112.02(I), it is an unlawful employment practice to discriminate in any manner (i.e., retaliate) against any person because s/he opposed an unlawful discriminatory practice.

121. Under Ohio law including R.C. 4112.99, whoever violates the above-described legal obligation is subject to a civil action for damages, injunctive relief, or any other appropriate relief.

122. Professor Ku had a reasonable, good-faith belief, based on the accumulated effect of the information he had, that Dean Mitchell had engaged and might continue to engage in sexual harassment of and sex discrimination against women in the Case Law School community. Professor Ku was concerned about the potential effect on the work and educational environment as a whole, and with complying with the mandates of Case's policy. He reported his belief about Dean Mitchell's conduct up the chain of command.

123. A reasonable person in a similar situation would find the conduct offensive. And a reasonable person in a similar situation would believe that he or she was protected by Case's policy.

124. Defendants intentionally and maliciously discriminated and retaliated against Professor Ku after he opposed an unlawful discriminatory practice, i.e., Dean Mitchell's sexual harassment of and sex discrimination against females in the law-school community.

125. Dean Mitchell retaliated against Professor Ku in numerous ways including, but not limited to, the following:

- a. Dean Mitchell threatened to fire Professor Ku;
- b. Dean Mitchell tried to have Professor Ku removed from the faculty;
- c. Dean Mitchell suggested that Professor Ku should not continue as Associate Dean for Academic Affairs;
- d. Dean Mitchell ceased all face-to-face communication with Professor Ku and only communicated with him through staff, email, or memo;
- e. Dean Mitchell froze out Professor Ku from all substantive discussions and decision-making regarding the law school that traditionally were the responsibilities of the Associate Dean for Academic Affairs such as new course offerings and staffing those courses;
- f. Dean Mitchell stripped Professor Ku of his substantive responsibilities as Associate Dean including consultation and direct decision making for the law school;
- g. Dean Mitchell required Professor Ku to be in the building five days per week—which had never before been a requirement of his position—and made more difficult Professor Ku's ability to perform academic work without distraction or interruption;
- h. Dean Mitchell required Professor Ku to complete busywork such as submitting a report about his plans for his position as associate dean, which Dean Mitchell never discussed with him (Ku);
- i. Dean Mitchell excluded Professor Ku from the Breakfast with the Deans meeting (a get-to-know-you event that an associate dean would be expected to attend) never notifying Professor Ku of the event;

- j. Dean Mitchell denied Professor Ku the opportunity to be considered for the endowed professorship known as the Spangenberg Family Foundation Chair in Law and the Arts, and any resulting increase in compensation;
- k. Dean Mitchell heaped additional duties on Professor Ku that had previously been the responsibility of another associate dean despite that associate dean's (*Professor I*'s) discouragement from doing so due to Professor Ku's current workload;
- l. Dean Mitchell constructively discharged Professor Ku from the post of Associate Dean for Academic Affairs;
- m. Dean Mitchell stripped Professor Ku of the additional financial compensation associated with being the Associate Dean for Academic Affairs;
- n. Dean Mitchell effectively denied Professor Ku the additional financial compensation customarily associated with being a former Associate Dean for Academic Affairs;
- o. Dean Mitchell excluded Professor Ku from discussions regarding growing and marketing the Center for Law, Technology & the Arts, which Professor Ku co-directed at the time;
- p. Dean Mitchell stripped Professor Ku of his co-directorship of the Center for Law, Technology & the Arts and the additional financial compensation associated with that post;
- q. Dean Mitchell awarded Professor Ku a negligible pay increase not in line with his customary increases during his decade of service at the Case Law School; and
- r. Dean Mitchell required Professor Ku to teach an increased course load without additional compensation.

126. In short, in retaliation for Professor Ku reporting Dean Mitchell's misconduct, Dean Mitchell did to Professor Ku nearly everything that can be done to a tenured professor.

127. Dean Mitchell's retaliation changed the terms and conditions of Professor Ku's employment and subjected him to adverse employment actions.

128. Defendant Case is vicariously liable for Defendant Mitchell's acts toward Professor Ku.

129. As a direct and proximate result of Defendants' unlawful conduct, Professor Ku has suffered and will continue to suffer economic and non-economic damages for which Defendants are liable jointly and severally liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

COUNT 2
INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

130. Plaintiff Ku incorporates all previous allegations.

131. In conducting himself as he did, Dean Mitchell either intended to cause emotional distress or knew or should have known that the actions he took would result in serious emotional distress to Professor Ku.

132. Dean Mitchell's conduct in haranguing Professor Ku for reporting the dean's sexually harassing behavior and retaliating against Professor Ku for reporting that misbehavior was extreme and outrageous. For an attorney to engage in such conduct is shocking. Dean Mitchell's behavior went beyond all possible bounds of decency and was such that it could be considered intolerable in civilized society.

133. As a direct and proximate result of Dean Mitchell's unlawful conduct, Professor Ku suffered and will continue to suffer mental anguish so serious and of a nature that no reasonable man could be expected to endure it and for which Dean Mitchell is liable.

134. Professor Ku is entitled to punitive damages based on Dean Mitchell's egregious conduct.

COUNT 3

BREACH OF CONTRACT AND THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

135. Plaintiff Ku incorporates all previous allegations.

136. As a tenured professor, Professor Ku has a contract with Case the relevant terms of which are set out in the Faculty Handbook.⁵

137. The Faculty Handbook requires all members of the university community to adhere to the sexual-harassment policy and to report violations of the policy, including any incidents that faculty witness or hear about that "could be construed as sexual harassment."

138. The Faculty Handbook prohibits retaliation against persons who raise concerns about sexual harassment and assures faculty that "appropriate action will be taken" if retaliation occurs.

139. Professor Ku and Case had a meeting of the minds, in the form of an explicit or implicit understanding, that each would abide by the respective provisions of the Faculty Handbook requiring mandatory reporting and prohibiting retaliation.

140. Professor Ku acted in accordance with his express obligations under Case's sexual-harassment policy, and as articulated in the Faculty Handbook, to identify and report sexual harassment he witnessed and heard about from others.

141. Professor Ku would not have reported Dean Mitchell's sexual harassment if he (Ku) had not believed Case would comply with its obligations to take appropriate action to prevent, punish, and/or correct retaliation by Dean Mitchell and others at his direction.

142. The Faculty Handbook required Case to hold Dean Mitchell responsible for retaliating against Professor Ku.

143. Implied in Professor Ku's employment contract with Case was a covenant of good faith and fair dealing.

⁵ Certain pages of the Case Faculty Handbook for 2011 are attached as Exhibit 3.

144. Case breached its contract with Professor Ku by not taking preventive, corrective, and/or punitive action against Dean Mitchell for retaliation. And Case breached the implied covenant of good faith and fair dealing inherent in its relationship with Professor Ku by retaliating and permitting retaliation against him after he complied with his obligation to report potential sexual harassment.

145. Case failed to perform all acts reasonably necessary to prevent, correct, and/or punish retaliation against Professor Ku.

146. By failing to make all reasonable efforts to prevent, correct, and/or punish retaliation by Dean Mitchell, Case breached its contract with Professor Ku.

147. As a direct and proximate result of Case's breaches, Professor Ku sustained damages whose nature and extent will be determined at trial and for which Case is liable.

PRAYER FOR RELIEF

For the reasons stated above, Plaintiff respectfully requests the following relief from the Court.

- A. Declare that Defendants' acts and conduct constitute violations of Ohio law;
- B. Enjoin Defendants from further retaliating against Professor Ku and from further implementing any previous acts of retaliation;
- C. Enter judgment in Professor Ku's favor as to all claims for relief;
- D. Award Professor Ku full compensatory damages, economic and non-economic, including, but not limited to, damages for pain and suffering, mental anguish, emotional distress, humiliation, and inconvenience that Professor Ku has suffered and is reasonably certain to suffer in the future.
- E. Award Professor Ku punitive damages for Defendants' intentional and malicious violation of Ohio law;
- F. Award pre-judgment and post-judgment interest at the highest lawful rate;
- G. Award Professor Ku his reasonable attorneys' fees (including expert fees) and all other costs of this suit;
- H. Award all other relief in law or equity to which Professor Ku is entitled and that the Court deems equitable, just, or proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues within this Complaint.

Respectfully submitted,

THE CHANDRA LAW FIRM, LLC



Subodh Chandra (0069233)
Ashlie Case Sletvold (0079477)
1265 W. 6th St., Suite 400
Cleveland, OH 44113-1326
216.578.1700 Phone
216.578.1800 Fax
Subodh.Chandra@chandralaw.com
Ashlie.Sletvold@chandralaw.com

Attorneys for Plaintiff Professor Raymond Ku

CERTIFICATE OF SERVICE

I certify that on October 31, 2013, the attached document was served via email and U.S. Mail to the following recipients:

Thomas H. Barnard
Michelle R. Arendt
Ogletree Deakins Nash Smoak & Stewart P.C.
127 Public Square
4130 Key Tower
Cleveland, OH 44114

Counsel for Defendant Case Western Reserve University

Steven S. Kaufman
Kaufman & Co. LLC
1001 Lakeside Ave., Suite 1710
Cleveland, OH 44114

Counsel for Defendant Lawrence E. Mitchell



One of the attorneys for Plaintiff Professor Raymond Ku